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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 DAVID MOORE,

No. C 07-03850 SI

9 Plaintiff,

**ORDER DISMISSING MOTION FOR  
JUDGMENT ON THE PLEADINGS AND  
GRANTING PLAINTIFF LEAVE TO  
AMEND COMPLAINT**

10 v.

11 GILEAD SCIENCES, INC.,

12 Defendant.  
13 \_\_\_\_\_/

14 Defendant's motion for partial judgment on the pleadings is scheduled for a hearing on  
15 September 22, 2011. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is  
16 appropriate for resolution without oral argument, and VACATES the hearing.  
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18 **DISCUSSION**

19 Defendant has filed a motion for partial judgment on the pleadings with respect to certain of  
20 plaintiff's claims under New York state law. Plaintiff has responded with a proposed amended  
21 complaint which would take into account certain of defendant's arguments by eliminating some claims  
22 and adjusting others. Under these circumstances, the Court determines that judicial efficiency will not  
23 be served by ruling on the merits of claims which are no longer being asserted.

24 Rather, plaintiff's request for leave to amend his complaint will be granted. The amended  
25 complaint must be filed no later than **September 27, 2011**

26 The Court anticipates future motion practice regarding the fourth amended complaint. If the  
27 amended complaint contains any claims alleging a violation of New York Labor Law Section 740, it  
28 and any subsequent motion for judgment on the pleadings must address an issue ignored in the instant

1 motion papers. That issue is whether plaintiff can sustain a claim under § 740 prohibiting retaliation  
2 for disclosures of violations *constituting health care fraud*. In the instant papers, both parties focused  
3 their attention on the § 740 language and case law concerning disclosures of violations that “present a  
4 substantial and specific danger to the public health or safety,” ignoring the 2006 amendments to § 740,  
5 which added the language “or which constitutes health care fraud.” 2006 N.Y.Laws, c. 442 §§ 12, 13,  
6 14; *see Lloyd v. Cardiology & Internal Medicine of Long Island, PLLC*, 847 N.Y.S.2d 902 (Sup. Ct.  
7 2007). If a § 740 claim is alleged, the Court expects both parties to address whether plaintiff has  
8 sufficiently asserted a claim that defendant committed actions constituting “health care fraud” as that  
9 term is defined under New York law.

10 The plaintiff’s request for leave to file a fourth amended complaint is hereby GRANTED and  
11 the current motion for partial judgment on the pleadings is DISMISSED. [Docket No. 79]

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13 **IT IS SO ORDERED.**

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15 Dated: September 20, 2011



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SUSAN ILLSTON  
United States District Judge